

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**Donna Marie Rossillio,  
Plaintiff,**

**CIVIL ACTION**

**v.**

**Overbrook School for the Blind,  
and Gerald Kitzhoffer ,  
Defendants.**

**NO. 16-1649**

**ORDER**

**AND NOW**, this 29th day of July, 2016, upon consideration of Defendants Overbrook School for the Blind and Gerald Kitzhoffer's Motion to Dismiss Count V of Plaintiff's Second Amended Complaint Under FRCP 12(b)(6) or in the Alternative Under FRCP 56 For Summary Judgment (Doc. No. 12, filed June 10, 2016), plaintiff's Answer to Defendant's Motion to Dismiss Count V of Plaintiff's Second Amended Complaint for the Alternative, for Summary Judgment with Regards to Plaintiff's Section 1983 Claim [sic] (Doc. No. 13, filed June 24, 2016), Defendants OverBrook School for the Blind and Gerald Kitzhoffer's Reply Brief in Further Support of their Reply Brief in Support of their Motion to Dismiss Count V of Plaintiff's Second Amended Complaint Under FRCP 12(b)(6) or in the Alternative Under FRCP 56 for Summary Judgment (Doc. No. 16, filed July 18, 2016), and Plaintiff's Sur Reply to Defendants Motion Under F.R.C.P. 12(b)(6) or for Summary Judgment as to Count V of Plaintiff's Second Amended Complaiont (Doc. No. 20., filed July 28, 2016), for the reasons set forth in the accompanying Memorandum dated July 29, 2016, **IT IS ORDERED** as follows:

1. Overbrook School for the Blind and Gerald Kitzhoffer's Motion to Dismiss Count V of Plaintiff's Second Amended Complaint Under FRCP 12(b)(6) is **DENIED**.

2. The Court **DECLINES** to treat the Motion to Dismiss as a Motion for Summary Judgment.

**IT IS FURTHER ORDERED** that the entry of this Order is without prejudice to defendants' right to file a motion for summary judgment as to Count V of plaintiff's Second Amended Complaint after completion of discovery.

**BY THE COURT:**

**/s/ Hon. Jan E. DuBois**

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**DuBOIS, JAN E., J.**